

Service Date: August 9, 1990

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER OF The Application	)	UTILITY DIVISION
by the MONTANA POWER COMPANY for	)	
Authority to Increase Rates for	)	DOCKET NO. 90.6.39
Natural Gas and Electric Service.	)	ORDER NO. 5484a

ORDER ON OBJECTIONS  
and  
PROCEDURAL ORDER

On June 27, 1990 the Montana Public Service Commission (Commission) received an application from the Montana Power Company (MPC) for authority to increase electric and gas rates. MPC's application is limited to revenue requirements and does not include information required by Statements L and M (ARM 38.5.176 and 38.5.177) on allocated cost of service and rate design. In its letter of transmittal in this Docket, MPC acknowledged this deficiency and requested that the Commission waive those requirements. MPC indicated that it will file a separate cost-of-service/rate design application to adjust its natural gas rate structures by August 10, 1990, and an application to adjust its electric rate structures by September 30, 1990. MPC suggested that these be considered "Phase-II" filings to the initial revenue requirements filing.

On July 18, 1990 the Commission received an objection from Stone Container Corporation to MPC's request to waive the Commission's minimum filing requirements with respect to the

gasportion of MPC's application. On the same date the Commission received an objection from the Large Customer Group (LCG) to MPC's request to waive the Commission's minimum filing requirements with respect to the electric portion of MPC's application. On July 26, 1990 MPC filed a response to these objections. On July 23, 1990, at a regularly scheduled agenda meeting, the Commission waived ARM 38.5.184 in order to consider the objections more than 30 days after the June 27, 1990 date of filing.

#### Disposition of Objections

Both Stone Container and the LCG based their objections on the premise that granting MPC a waiver would deny intervenors nine months within which to evaluate cost-of-service/rate design information. In addition, Stone Container and LCG suggested that if the Commission grants MPC a waiver, it should do so only upon the condition that MPC stipulate to the nine month period commencing upon the filing of all cost-of-service/rate design information. Both Stone Container's and LCG's objection is based upon faulty premises. If the Commission were to grant the waiver, cost-of-service/rate design would be considered a separate filing, for both electric and gas, with separate nine month time frames. Further, the Commission does not need MPC's, or any utility's, agreement in order to revise the nine month time period if a filing is substantially deficient. However, for the reasons described below, and not for the reason provided in the objections, the Commission finds that MPC's filing is deficient and sustains the objections of Stone Container and LCG. Pursuant to ARM 38.5.184 the Commission finds that MPC's June 27, 1990 filing, by not including information required by ARM 38.5.176 and ARM 38.5.177, fails to substantially comply with minimum filing requirements. The Commission will consider the filing complete upon receipt of

information from MPC, for both electric and gas, as required by ARM 38.5.176 and ARM 38.5.177. For purposes of 69-3-302, MCA, the Commission will consider the nine month time period for issuing an order in this Docket as beginning upon receipt from MPC of all necessary information, for both electric and gas, required by Commission rules.

The Commission recognizes that it has in previous dockets granted requests to waive the minimum filing requirements and to allow revenue requirements and cost-of-service/rate design to be processed separately. In this case, however, because 1) the Commission generally favors considering revenue requirements and cost-of-service/rate design simultaneously (as indicated by the design of the minimum filing requirements), 2) there is only a short time between MPC's ability to make a revenue requirements filing and its ability to make a cost-of-service/rate design filing, and 3) the magnitude of this filing makes it especially important that ratepayers see a single rate change that reflects accurately their revenue responsibility, the Commission does not deem it appropriate to waive the minimum filing requirements as MPC requested. This action should not be interpreted as indicating a change in Commission philosophy with respect to waiver of its filing requirements. Rather, the Commission will continue to treat all waiver requests on a case-by-case basis. Further, the Commission's decision to consider MPC's filing deficient, and to change the date of initial filing for purposes of the nine month time period, does not affect the Commission's consideration of MPC's interim rate increase request, which will proceed as if this filing had been deemed complete. The Commission may consider a request for interim rate change without regard to whether the filing meets minimum filing requirements. See ARM 38.5.505(4).

#### Procedural Order

Pursuant to ARM 38.2.2701, a prehearing conference was held to consider this Docket on July 26, 1990. After considering

the comments received at the prehearing conference, and in light of the Commission's decision on objections described above, the following Procedural Order is established. The Commission notes that the schedule herein is based on the assumption that MPC will file cost-of-service/rate design information on August 10 and September 30, 1990 for gas and electric respectively. If that information is not filed on those dates then the schedule will be adjusted accordingly. Further, the Commission notes that if MPC's motion to consolidate is granted, then the remaining procedures in Docket No. 90.1.1 will be incorporated into this schedule.

In this Order the term "parties" includes the Applicant, Montana Power Company (MPC) and all intervenors. Individuals or entities are not parties unless they have been granted intervention by the Commission.

Copies of all pleadings, motions, discovery requests, prefiled testimony and briefs shall be filed with the Commission and served on all parties. Copies of all discovery responses shall be served on the Commission, on the party making the discovery requests and on parties who request the responses pursuant to paragraph 12 of this Order. In the case of a filing directed to the Commission, such as motions, testimony and briefs, the original and ten copies shall be filed with the Commission. Service upon a party shall be upon that party's attorney of record and such other individuals as may be reasonably designated by the attorney of record.

All dates listed in the following schedule are mailing dates. With the exception of written discovery (data requests), parties may mail all material by first class mail. At the request of those parties to whom discovery is directed, written discovery must be transmitted so that it is received on the next business day following the discovery dates listed in the following schedule. Parties and Commission staff may make arrangements among themselves for the use of fax transmissions. Fax transmissions must be followed in hard copy by first class mail.

Schedule

Unless otherwise herein specified, the following schedule shall apply in this Docket:

- (a) August 15, 1990: Final day for timely filing of Petitions to Intervene by persons who are interested in and directly affected by this Docket.
- (b) September 11, 1990: Final day for written discovery directed to MPC on its June 27, 1990 filing and on its August 10, 1990 filing on cost-of-service/rate design for its gas utility.
- (c) October 15, 1990: Final day for completion by MPC of all answers and responses to written discovery directed to MPC by other parties pursuant to paragraph 9(b).
- (d) October 22, 1990: Final day for written discovery directed to MPC on its September 30, 1990 filing on cost-of-service/rate design for its electric utility.
- (e) November 12, 1990: Final day for completion by MPC of all answers and responses to written discovery directed to MPC pursuant to paragraph 9(d).
- (f) December 10, 1990: Final day for completion and service upon MPC and other parties of the prepared testimony and exhibits of all parties except MPC.
- (g) December 24, 1990: Final day for written discovery directed to all parties by MPC; final day for intervenor discovery to parties other than MPC.
- (h) January 7, 1991: Final day for completion of answers by all parties to written discovery made pursuant to paragraph 9(g).
- (i) January 23, 1991: Final day for service of rebuttal testimony by MPC and testimony of other parties which is in rebuttal to testimony filed pursuant to paragraph 9(f).
- (j) January 30, 1991: Final day for written discovery directed to all parties that filed rebuttal testimony pursuant to paragraph 9(i); such discovery must be directly related to the rebuttal testimony.
- (k) February 6, 1991: Final day for completion of answers by all parties to discovery made pursuant to paragraph 9(j).
- (l) February 18, 1991: Opening day of hearing. A prehearing conference may be held in this Docket to consider an appropriate order of presentation of issues, determine witness sequence, and inform all parties of intention to introduce evidence.

Intervention

Parties seeking to intervene after August 15, 1990, must file a Petition to Intervene with the Commission. The petition shall demonstrate (A) the position that the intervenor will take if the intervention is granted, (B) that the proposed intervenor has an interest in and is directly affected by this Docket, (C) that the intervention, if granted, will not delay or prejudice the proceeding in the Docket, and (D) good cause why the petition was not timely filed. (ARM Section 38.2.2401 et seq.).

Discovery

The term "discovery" as used in this order includes all forms of discovery authorized by the Montana Rules of Civil Procedure, as well as informal "data requests." The Commission urges all parties to conduct their discovery as much as possible through the use of data requests.

Written discovery and data requests will be served on all parties. This should serve to reduce the number of duplicate requests in subsequent rounds of discovery. Unless otherwise agreed between individual parties, copies of answers to all written discovery and data requests will be served only on parties specifically requesting them and on the Commission. In this connection, the term "parties" includes the parties, their attorneys, and witnesses testifying on matters to which the answers relate, who are not located in the same town as the party. If any party wants material requested by any other party, it should so inform the party to whom the data requests or written discovery is directed. The Commission encourages all parties to scrutinize carefully the material that has been provided in the Docket prior to submitting data requests. This should serve to ease the burden on those parties answering data requests. In addition to the format requirements described at paragraph 13, the Commission further encourages each party to inquire of other parties concerning the most helpful and efficient format for data requests

and responses. MPC has requested that data requests be one to a page and indicate the MPC witness to whom each request is directed. Other parties may have similar format preferences.

The Commission directs all parties to prepare data requests according to the following guidelines: Each party's data requests must be numbered sequentially throughout the Docket, beginning with the number one (1). In addition, data requests must include at the beginning of each request a short description (approximately five words or less) explaining the subject of the data request. Other identifying information, such as the witness to whom the request is submitted, exhibit no., page no., etc., may be included in addition to, but not in lieu of, the subject of the request. This requirement will help the Commission to identify more quickly all data requests and responses addressing a particular subject or group of subjects. Subject descriptions will obviously vary from one party to another. However, each party should attempt to keep descriptions consistent from one request to another. Multi-part requests may be used. Each part of a multi-part request should be denoted by a lower case letter (a, b, c, etc.). Requests should be limited to five (a-e) parts. If additional parts are necessary, additional requests should be made. A single part request should be denoted by the request number only. Examples of acceptable and unacceptable data requests are as follows:

Acceptable Data Request Format

- PSC-500      Re:    Purchased Gas Contracts  
                      Witness - Burke, Page JBB-4, Lines 13-15.
- Please provide the origination and expiration date for each contract.
- PSC-501      Re:    Bypass  
                      Witness - Johnson, Page DAJ-14, Lines 11-14.
- a.    what risks of bypass would be avoided by the shareholders as a result of the Company's proposed treatment?

- b. what risks of bypass would be avoided by the ratepayers as a result of the Company's proposed treatment?
- c. what risks of bypass would be shared by ratepayers and shareholders as a result of the Company's proposed treatment?

Unacceptable Data Request Formats

- PSC-502      Re:    Witness - Burke, Page.    JBB-4, Lines 13-15.
- 1.    Please provide the origination date for each contract.
  - 2.    Please provide the expiration date for each contract.
- PSC-503      Re:    Bypass  
                  Witness - Johnson, Page DAI-14, Lines 11-14.
- a.    what risks of bypass would be avoided by the shareholders as a result of the Company's proposed treatment?
    - 1.    what risks of bypass would be avoided by the ratepayers as a result of the Company's proposed treatment?
    - 2.    what risks of bypass would be shared by ratepayers and shareholders as a result of the Company's proposed treatment?
- PSC-504      Re:    Core vs Noncore Customers
- a.    what benefits will the core customers enjoy that will be unavailable to noncore customers?
  - b.    what barriers will exist to discourage customers from flip-flopping between core and noncore status?
  - c.    Please identify and quantify all additional costs that will be experienced to identify and serve potential noncore customers.



- d. Please identify and quantify potential additional revenues that could result from the separation of noncore from core customers.
- e. Please fully define the difference between a core and a noncore customer.
- f. On average, is the core customer's demand more elastic or less elastic than the noncore customer's?

Parties receiving written discovery or data requests have five (5) days from receipt of the same, or until a response is due, whichever is less, within which to voice any objections it has to the request. The objection and notice thereof shall be served upon the Commission and all parties of record. The Commission may dispose of such objections by prompt ruling, or may schedule arguments on the objections. Failure to object promptly will be deemed acceptance of the requests.

In the event any requesting party is dissatisfied with the response to any written discovery or data request, such party must, within five (5) days after receipt of such response, serve in writing upon the Commission, and simultaneously upon all parties of record, its objections to such response. The Commission may dispose of such objections by prompt ruling, or may schedule argument on the objections. The Commission will issue its order either sustaining or overruling the objections. If objections are sustained, a time period will be set within which a satisfactory response must be made.

Submission of written discovery or data requests after the period established for the same will be allowed by leave of the Commission. Such requests will not be permitted unless the party making the request shows good cause as to why the requests were not submitted within the time period allowed.

Unless excused by the Commission, failure by a party to answer data requests or other discovery from any party may result in:

- (a) An order refusing to allow the disobedient party to support or oppose related claims, or prohibiting him from introducing related matters in evidence;
- (b) An order striking pleadings, testimony or parts thereof, or staying further proceedings until the request is satisfied, or dismissing the action or proceeding or any part thereof.

Neither the Commission nor the Commission staff is a party to this proceeding. Commission staff has the rights and responsibilities of parties under Commission rule. See ARM 38.2.601(n). The Commission directs its staff to make every good faith effort to meet the discovery deadlines imposed on parties in this Order. However, the Commission reminds parties to this proceeding that Commission staff, in addition to responsibilities imposed by this order, has an overriding responsibility to advise the Commission in the furtherance of just and reasonable rates. That responsibility carries with it a duty to ensure that all

issues are thoroughly explored on the record. If, after discovery deadlines have passed, and after diligent discovery efforts by parties and Commission staff, certain issues remain unexamined, the Commission reserves the right for its staff to conduct discovery beyond the deadlines contained in this Order. The inability, or the unwillingness, of parties to cooperate with Commission staff in responding to this late discovery may result in a continuance of the scheduled hearing, or in the reservation of certain issues for a future proceeding.

#### Testimony and Evidence

The Commission contemplates a progressive narrowing of issues as prefiled testimony proceeds from direct to rebuttal. Introduction of new issues or data in new areas will be carefully scrutinized and disallowed unless reasonably related to issues earlier identified in the application, in Commission orders or in testimony prefiled in conformance with this order.

At the hearing, prefiled direct, answer and rebuttal testimony will be adopted into the record without the need of recitation by the witness. This procedure will eliminate retyping of prepared testimony into the hearing transcript.

All proposed exhibits and prefiled written testimony shall be marked for the purposes of identification prior to the start of the hearing. Parties shall arrange in advance with the court reporter the manner of identifying their exhibits.

When cross-examination is based on a document, not previously filed with the Commission, copies of the document will be made available to the Commission unless good cause is shown why copies are not available. Parties introducing data requests or other discovery must have copies of each request and response available at the hearing for the court reporter, each Commissioner, the Commission staff, and all parties. This last requirement may be waived if the documents to be introduced are bulky, or for other good cause, and if previous arrangements have been made with the Commission and all parties.

Parties may be permitted to present "live" rebuttal testimony only if it is in direct response to an issue raised for the first time in cross-examination or the testimony of a public witness. Such testimony will be allowed only by leave of the presiding officer.

Citizens and citizen groups will, in the discretion of the Commission, be allowed to make statements without having submitted prepared written testimony; in addition, if they have prepared written testimony they may read it if they desire, or they may have it adopted directly into the record.

The rules of evidence applicable in the District Courts of the State of Montana at the time of the hearing in this Docket will be used at the hearing.

Prehearing Motions and Conferences

Motions by any party, including motions to strike pre-filed testimony and motions concerning any procedural matter connected with this docket shall be raised at the earliest possible time. Prehearing motions shall be submitted on briefs unless otherwise requested by a party. If oral argument is requested, and the request is granted, the party requesting oral argument shall notice the same for hearing before the Commission.

The Commission may, at any time prior to the hearing, set a final Prehearing Conference. At that prehearing conference there may be discussed, among other things, the feasibility of settlement of any issues in the proceeding, simplification of issues, possibility of obtaining admissions of fact and documents, the distribution and marking of written testimony and exhibits prior to the hearing, and such other matters as may aid in the disposition of the proceeding or settlement thereof.

Nothing in this order shall be construed to limit the legally established right of the Commission or its staff to inspect the books and accounts of MPC at any time.

Witness Sequence List

The Applicant shall provide the Commission with one witness list indicating the sequence that witnesses will be called by the parties at the hearing. It shall be the responsibility of the Applicant and any other parties to this Docket to negotiate among themselves the witness sequence. The Applicant may inform the Commission and parties of the final sequence in writing or by telephone directed to the party's attorney of record, and Commission staff attorney.

DONE AND DATED THIS 31st day of July, 1990 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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HOWARD L. ELLIS, Chairman

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DANNY OBERG, Vice Chairman

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JOHN B. DRISCOLL, Commissioner

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REX MANUEL, Commissioner

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WALLACE W. "WALLY" MERCER, Commissioner

ATTEST:

Ann Peck  
Commission Secretary

(SEAL)